

4069DIV/GETS 5294.2  
PATENT

## REMARKS

Applicants have thoroughly considered the Examiner's remarks and have amended the claims to more clearly set forth the invention. Claims 67-82 have been canceled, and new claims 83-101 have been added by this Amendment C. Applicants respectfully request allowance of claims 83-101 in light of the amendments and following remarks.

As explained below, applicants submit that the cited references, whether considered alone or in combination as suggested in the Office action, fail to teach or suggest all of the features of applicants' amended claims. Thus, *prima facie* obviousness has not been established. (See MPEP 2142 and 2143).

The office acknowledges that Nickles I does not describe that the power operating modes are determined as a function of a determined fuel or power consumption rate. (See Office action at page 2). However, to remedy this deficiency the Office asserts that the power operating mode of Nickles II is determined as a function of fuel consumption rate and that it would be obvious to one skilled in the art to modify the system of Nickles I to determine the power operating mode as a function of various inputs, including fuel consumption rate. Applicants respectfully disagree with the Examiner's characterization of the subject matter disclosed by Nickles II.

Nevertheless, applicants have added new claims directed to a system for retrofitting a control system of an existing consist. As described in the present application, a retrofitted system according to the invention includes a first module 218 between the master control 214 and the first control 208. The first module 218 receives the desired operating mode from the master control 214 via the train line 216 and selectively provides a first modified operating mode to the first controller 208 for use in controlling the first locomotive 202. Depending on the table or algorithm used to adjust the notches, the module 218 would either increase, decrease or maintain at the same level the notch indication provided to the first control 208 as compared to the desired notch indication from the master control 214. A second module 220 is interposed between the master control 214 and the second control 210. The second module, as with the first module, receives a desired operating mode via the train line 216 and selectively provides a second modified operating mode to the second controller 210. In at least one mode of

4069DIV/GETS 5294.2  
PATENT

operation of the consist, the operating mode of the first and second locomotives is different as compared to the desired operating mode of the consist. For example, if the system is operating according to Table 2, lines 4, 5, and 6, a consist operating mode of N3, N4 or N5 will result in an operating mode of N5-idle, N6-idle or N8-idle for the first and second locomotives, respectively. (See Application page 15, paragraph 0032). Moreover, as disclosed in the present application, newer locomotives with less operating time can be favored over older locomotives with more operating time in their history. (See Application page 12, paragraph 0027). To this end, new independent claim 83 recites, in part :

A retrofit system for controlling a consist that includes:

"a performance profile for storing previous operating time information for each of the first and second locomotives, said performance profile being coupled to the communication link;

a first processing module coupled to the communication link and responsive to the desired operating mode from the master control to selectively provide a modified operating mode to the first locomotive control, and wherein the first locomotive control is responsive to the first modified operating mode to determine a mode of operation of the first locomotive;

a second processing module coupled to the communication link and responsive to the desired operating mode from the master control to selectively provide a modified operating mode to the second locomotive control, wherein the second locomotive control is responsive to the second modified operating mode to determine a mode of operation of the second locomotive, and wherein, in at least one mode of the plurality of operating modes, the modified operating mode of the second locomotive is different as compared to the modified operating mode of the first locomotive; and

wherein the first and second processing modules access the performance profile to determine the operating mode of the first and second locomotives, respectively, as a function of the previous operating time information of each of the first and second locomotives."

Neither Nickles I nor Nickles II teach or suggest a retrofit system for controlling a consist that includes first and second processing modules that provide modified operating

4069DIV/GETS 5294.2  
PATENT

modes to the first controller and second controller, respectively, as a function of a previous operating time of each of the first and second locomotives.

In addition, the present application discloses that "the ACM processing module may adjust or modify the profile according to the time of year or age of the locomotive or other variables. (See Application page 14, paragraph 0031). Accordingly, new claim 92 recites, in part, "the first and second processing modules determine the operating mode of the first and second locomotives, respectively, as a function of an age of each of the first and second locomotives." The combination of Nickles I and Nickles II also fails to teach or suggest this claimed aspect of the invention. Accordingly, applicants submit claim 92 is allowable over the cited references.

#### SUMMARY AND CONCLUDING REMARKS

In view of the foregoing, applicants submit that claims 83 and 92 are allowable over the cited art. The remaining new claims are dependent claims and are believed to be allowable for at least the same reasons as the independent claims from which they depend.

It is felt that a full and complete response has been made to the Office action, and applicants respectfully submit that pending claims 83-101 are allowable over the cited art and that the subject application is now in condition for allowance. The fact that applicants may not have specifically traversed any particular assertion by the Office should not be construed as indicating applicants' agreement therewith.

The Commissioner is hereby authorized to charge \$120 for a one (1) month extension of time up to and including today's date to Deposit Account No. 07-0846.

Respectfully submitted



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